

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1271 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 35-41-1-5.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2008]: **Sec. 5.5. "Credit restricted felon"**
6 **means a person who has been convicted of at least one (1) of the**
7 **following offenses:**
8 (1) **Child molesting involving sexual intercourse or deviate**
9 **sexual conduct (IC 35-42-4-3(a)), if:**
10 (A) **the offense is committed by a person at least**
11 **twenty-one (21) years of age; and**
12 (B) **the victim is less than twelve (12) years of age.**
13 (2) **Child molesting (IC 35-42-4-3) resulting in serious bodily**
14 **injury or death.**
15 (3) **Murder (IC 35-42-1-1), if:**
16 (A) **the person killed the victim while committing or**
17 **attempting to commit child molesting (IC 35-42-4-3);**
18 (B) **the victim was the victim of a sex crime under**
19 **IC 35-42-4 for which the person was convicted; or**
20 (C) **the victim of the murder was listed by the state or**
21 **known by the person to be a witness against the person in**
22 **a prosecution for a sex crime under IC 35-42-4 and the**
23 **person committed the murder with the intent to prevent**
24 **the person from testifying.**
25 SECTION 2. IC 35-50-6-3 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A person
27 assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the**
28 **person** is imprisoned for a crime or confined awaiting trial or
29 sentencing.
30 (b) A person assigned to Class II earns one (1) day of credit time for
31 every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined

awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

(d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing."

Page 4, after line 19, begin a new paragraph and insert:

"SECTION 4. IC 35-50-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person **who is not a credit restricted felon and who is** imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class IV. A credit restricted felon may not be assigned to Class I or Class II.

~~(b)~~ (c) A person **who is not assigned to Class IV** may be reassigned to Class II or Class III if ~~he~~ **the person** violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which ~~he~~ **the person** is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, ~~he~~ **the person** must be granted a hearing to determine ~~his~~ **the person's** guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive ~~his~~ **the** right to the hearing.

(d) A person who is assigned to Class IV may be reassigned to Class III if the person violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

~~(c)~~ (e) In connection with the hearing granted under subsection ~~(b)~~; **(c) or (d)**, the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in ~~his~~ **the person's** own behalf;

- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if ~~his~~ **the person's** testimony or any evidence derived from ~~his~~ **the person's** testimony is used in any criminal proceedings; and
- (10) have ~~his~~ **the person's** record expunged of any reference to the charge if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

~~(d)~~ **(f)** A person may be reassigned from Class III to Class I, ~~or~~ Class II, **or Class IV**, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if ~~he~~ **the person** should be reassigned to a higher credit time class. **A credit restricted felon may not be reassigned to Class I or Class II.**

SECTION 5. IC 35-50-6-5, AS AMENDED BY P.L.173-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

- (1) A violation of one (1) or more rules of the department of correction.
- (2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.
- (3) A violation of one (1) or more rules or conditions of a community transition program.
- (4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.
- (5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.
- (6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be

1 the basis for deprivation. Whenever a person is deprived of credit time,
 2 ~~he~~ **the person** may also be reassigned to Class II **(if the person is not**
 3 **a credit restricted felon)** or Class III.

4 (b) Before a person may be deprived of earned credit time, the
 5 person must be granted a hearing to determine the person's guilt or
 6 innocence and, if found guilty, whether deprivation of earned credit
 7 time is an appropriate disciplinary action for the violation. In
 8 connection with the hearing, the person is entitled to the procedural
 9 safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person
 10 may waive the person's right to the hearing.

11 (c) Any part of the credit time of which a person is deprived under
 12 this section may be restored.

13 SECTION 6. [EFFECTIVE JULY 1, 2008] **IC 35-41-1-5.5, as**
 14 **added by this act, and IC 35-50-6-3, IC 35-50-6-4, and**
 15 **IC 35-50-6-5, all as amended by this act, apply only to persons**
 16 **convicted after June 30, 2008."**

17 Renumber all SECTIONS consecutively.

(Reference is to EHB 1271 as printed February 22, 2008.)

Senator DROZDA